HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.24168 of 2006

Dated:07.12.2006

Between:

Sri Mada Babu Rao.

…Petitioner

and

Sri Nayudu Srinivas Rao and others.

…Respondents

HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.24168 of 2006

ORDER:

The petitioner assails the orders dated 20.03.2004 in Case No.D2/7/2003 passed by the Joint Collector, Nizamabad, in exercise of powers under Section 9 of the Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 (for short 'the Act').

The case of the petitioner in brief is as follows. The land admeasuring Ac.1.25 guntas in Survey No.347 situated at Kanteshwar Village of Nizamabad District, was purchased by one Chakati Gangaram. He sold an extent of Ac.1.00 to one Gopu Prabakar, and his wife Lingamma sold the remaining extent of Ac.0.13 guntas to two persons under registered sale deeds. The remaining extent of Ac.0.12 guntas is claimed by the petitioner. He also claims that Gangaram and Lingamma adopted him, and therefore, he succeeded to the property. Based on such claim he also obtained Occupancy Rights Certificate vide proceedings dated 07.02.2002 and also obtained pattadar pass books and title deeds. Aggrieved by the same, the first respondent preferred a revision petition before the Joint Collector alleging that the total extent of land in Survey No.347 is only Ac.1.13 guntas, that the land was sold by the inamdar Devidas Rao to Chakati Gangaram, who in turn sold Ac.1.00 of land to Gopu Prabakar, and Ac.0.13 guntas to Laxma Reddy and Eleti Bapu Reddy. He also alleges that Gopu Prabakar sold an extent of Ac.0.30 guntas to the first respondent.

The Joint Collector entertained the revision petition and called

for a report from the Revenue Divisional Officer, Nizamabad, the third respondent herein. He sent a report on 07.05.2003 stating that the total extent of land in Survey No.347 admeasuring Ac.1.13 guntas was originally classified as "Dastha Gardan" (land vested in the Government) and that Devidas Rao was inamdar and that Chakati Lingamma purchased the property, who sold entire extent to other third parties. He also reported that the first respondent purchased an extent of Ac.0.30 guntas from one of the purchasers of Lingamma under registered sale deeds dated 02.12.1992. Considering the same, the Joint Collector came to the conclusion that the petitioner herein is no way concerned with the land, and therefore, the issue of pattadar pass books to him is contrary to Rule 26(6) of the Andhra Pradesh Rights in Land and Pattadar Pass Books Rules, 1989 (for short 'the Rules'). The revision of the first respondent was accordingly allowed.

In this Writ Petition the learned Counsel for the petitioner submits that the petitioner filed a suit, being O.S.No.254 of 2002, for perpetual injunction on the file of the Court of the Principal Junior Civil Judge, Nizamabad, and pendency of the suit is a bar for entertaining the revision petition. The learned Counsel also contends that the Joint Collector erred in assuming that the total extent of land comprised in Survey No.347 is only Ac.1.13 guntas, whereas the total extent is Ac.1.25 guntas out of which Ac.0.12 guntas was inherited by the petitioner as adopted son of Lingamma and Gangaram. **Per contra**, the learned Assistant Government Pleader for Revenue (General-T) points out that before the Joint Collector the petitioner admitted that the total extent of land in Survey No.347 is Ac.1.13 guntas, and therefore, he cannot be permitted to take different stand in the Writ Petition. He also submits that mere pendency of the suit for injunction is not a bar under Rule 9(1)(c)(ii) of the Rules.

The dispute raised by the petitioner is regarding the extent of land comprised in Survey No.347. The Joint Collector called for a report from the Revenue Divisional Officer who submitted a report on 07.05.2003. It is always a presumption that the enquiries conducted by the revenue authorities resulting in submission of reports to higher authorities are based on the records. When the Revenue Divisional officer submitted a report to the effect that the total extent of land in Survey No.347 is Ac.1.13 guntas, which was sold by the inamdar in favour of Chakati Lingamma, the enquiry should stop there. Therefore, the question raised cannot be adjudicated in a Writ Petition. Secondly, a perusal of Rule 9(1)(c)(ii) of the Rules would show that the bar for entertaining an application for issuing pattadar pass books/title deeds or changing the entries in the record of rights applies only when a suit for declaration claiming better title is pending, and the party to the

proceedings before the recording/appellate/revisional authority under the Act filed a declaration to that effect. The suit filed by the petitioner is for injunction simplicitor, and therefore, the same is not a bar. A perusal of the impugned order would show that the petitioner herein admitted the position that the land in Survey No.347 admeasures only Ac.1.13 guntas. Therefore, this Writ Petition is misconceived.

The Writ Petition is accordingly dismissed. No costs.

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(V.V.S.RAO, J)

07.12.2006
vs